

DLD-378
(continued)

September 13, 2007

Ward v. Lamanna, et al.
C.A. No. 07-2023

ORDER

The foregoing appeal will not be dismissed under 28 U.S.C. § 1915(e)(2), and the Court will not take summary action, at this time. Appellees' motion for summary action is referred to the merits panel. See 3d Cir. IOP 10.6. Pursuant to the Clerk's order dated May 15, 2007, this appeal is hereby consolidated with C.A. Nos. 07-2024 and 07-2025 for all purposes. Appellant's motion for counsel is granted. See Tabron v. Grace, 6 F.3d 147, 155-58 (3d Cir. 1993). The Clerk is directed to request counsel to represent appellant in this appeal and to issue a consolidated briefing schedule at the appropriate time. In addition to such other issues as the parties may wish to raise in their briefs, the parties shall address, with respect to appellant's Eighth Amendment claim: (1) whether appellant presented sufficient evidence of either existing medical conditions or exposure to the contaminants in question, and of deliberate indifference, to survive summary judgment, see, e.g., Farmer v. Brennan, 511 U.S. 825, 834 (1994); Helling v. McKinney, 509 U.S. 25, 35 (1993); (2) whether appellant was entitled to a spoliation inference by reason of the conversion of the factory at issue during the pendency of the litigation, see, e.g., Brewer v. Quaker State Oil Ref. Corp., 72 F.3d 326, 334 (3d Cir. 1995); and (3) whether appellant's claim is barred as a matter of law by his voluntary acceptance of the employment at issue, see, e.g., Bagola v. Kindt, 131 F.3d 632, 645 n.18 (7th Cir. 1997).

By the Court,

/s/ D. Michael Fisher

Circuit Judge

Dated: September 27, 2007

tmm/cc: Mr. Myron Ward

Robert L. Eberhardt, Esq.

Rebecca R. Haywood, Esq.